IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6978 of 2007

Dr.Madhuri Trilok Gupta ..Petitioner

vs.

Trilok Jatashankar Gupta ..Respondent

Shri A.M.Vernekar for petitioner
Shri Ravindra Parekh i/b M/s Ravindra Parekh and Co. for respondent.

CORAM: S.C.DHARMADHIARI J

11th December, 2007

P.C.

1. Heard the learned Counsel appearing for the parties.

2. All that the petitioner wife seeks to include and incorporate in the existing petition is instances of the alleged cruel treatment meted out by the respondent/husband . There are some particulars which needed to be incorporated and in the submission of the petitioner/wife they were not included despite clear instructions to the earlier Advocate.

3. The trial Court has rejected this application and while rejecting it, essentially, put the ground of delay in forefront. The learned Judge could have imposed costs on the

petitioner for belated application but there are no other reasons assigned for rejection of the application.

4. In so far as the objection that the trial has commenced there is nothing to indicate from the record that the trial has commenced, in the sense contemplated by law. In such circumstances the petitioner would have been permitted to amend the pleadings by taking care of the aspect of delay.

5. This is not a case where the cause of action was altered or that application lacks bonafide. In such circumstances, following order would meet the ends of justice.

. The impugned order dated 9th August 2007 (below Exh.9 Interim Petition/application No.276 of 2006) is quashed and set aside. Amendment application preferred by the petitioner/wife is allowed. However, the petitioner/husband to pay costs quantified at Rs.3000/- to the respondent/wife either directly or deposit in the Trial Court. Upon costs being tendered and proof produced in that behalf, amendment to be carried out within a period of two weeks. The copy of the amended application be served within

a period of four weeks thereafter. Additional written statement, if any, to be filed within six weeks from the date of receipt of amended petition.

6. Needless to state that merely because the amendment is allowed does not mean that the allegations stand accepted or that the petitioner has proved the case of cruelty enabling her to seek divorce. All such aspects must be gone into independent of the order under challenge and it being set aside so also any observations made therein. Petition is disposed of.

(S.C.DHARMADHIKARI J.)